



## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### 49 CFR Parts 1570 and 1582

[Docket No. TSA-2015-0001]

RIN 1652-AA55

### Security Training for Surface Transportation Employees; Extension of Compliance Dates; Correcting Amendments

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Final rule.

**SUMMARY:** This action amends the “Security Training for Surface Transportation Employees” (Security Training) final rule (published March 23, 2020, and amended May 1, 2020, and October 26, 2020) to extend the compliance date by which a security training program must be submitted to TSA, and make minor technical corrections. TSA is aware that many owner/operators within the scope of this rule’s applicability may be unable to meet the compliance deadline for submission of the required security training programs to TSA for approval because of the impact of COVID-19 as well as actions taken at various levels of government to address this public health crisis. In response, TSA is extending the compliance deadline for submission of the required security training program from March 22, 2021, to no later than June 21, 2021. Should TSA determine that an additional extension of time is necessary based upon the impact of the COVID-19 public health crisis, TSA will publish a document in the *Federal Register* announcing an updated compliance date for this requirement.

**DATES:**

*Effective Date:* This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

*Compliance Dates:* The compliance dates for submission of security training programs to TSA under § 1570.109(b) is June 21, 2021 for existing operations and September 21, 2021 for operations that commence or modify operations to become subject to the regulation after June 21, 2021. The deadline for initial security training under § 1570.111 is extended for owner/operators that submitted their security training programs to TSA by the current deadline of March 22, 2021. These owner/operators will have an additional 90 days (15 months rather than 12 months) to complete initial training of their security-sensitive employees.

**FOR FURTHER INFORMATION CONTACT:** Victor Parker (TSA, Policy, Plans, and Engagement, Surface Division) or David Kasminoff (TSA, Office of Chief Counsel, Regulations and Security Standards) by telephone at (571) 227-5563 or email to [SecurityTrainingPolicy@tsa.dhs.gov](mailto:SecurityTrainingPolicy@tsa.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### *A. Security Training Final Rule and Previous Amendments*

TSA published the Security Training Final Rule on March 23, 2020.<sup>1</sup> This rule requires owner/operators of higher-risk freight railroad carriers, public transportation agencies (including rail mass transit and bus systems), passenger railroad carriers, and over-the-road bus companies, to provide TSA-approved security training to employees performing security-sensitive functions. As published on March 23, 2020, TSA scheduled the final rule to take effect on June 22, 2020, with the first compliance deadline set for July 22, 2020.<sup>2</sup> On May 1, 2020, TSA delayed the effective date of the final rule to September 21, 2020, in recognition of the potential impact of the COVID-19 public health crisis and related strain on resources for owner/operators required to comply

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<sup>1</sup> 85 FR 16456.

<sup>2</sup> See, e.g., 85 FR at 16469.

with the regulation.<sup>3</sup> TSA revised all compliance dates within the rule to reflect the new effective date.<sup>4</sup> On October 26, 2020, TSA extended the compliance deadline in 49 CFR 1570.109(b)(1) and (b)(2) for submission of security training programs from December 21, 2020, to March 22, 2021.<sup>5</sup>

On February 19, 2021, Chairs of the Rail Sector Coordinating Council (SCC),<sup>6</sup> Mass Transit SCC, Highway Motor Carrier SCC, and Short Line Industry Lead for the Rail SCC sent a letter to the Senior Official Performing the Duties of the TSA Administrator requesting a further 90-day delay in the date by which regulated entities must submit their security training program to TSA. Their request was based on the ongoing impact of the COVID-19 public health crisis and the likelihood that the development of the security training program “rests with the same subject matter leads that remain focused on containing the spread of, and mitigating risks posed by, the pandemic.”<sup>7</sup> For example, many of the regulated entities subject to the requirements of this rule are also subject to the mask requirements imposed pursuant to Executive Order (E.O.) 13998 of January 21, 2021 (Promoting COVID-19 Safety in Domestic and International Travel),<sup>8</sup> as further directed and implemented pursuant to the Secretary of Homeland Security’s January 27, 2021, Determination of a National Emergency (Requiring Actions to Protect the Safety of Americans Using and Employed by the

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<sup>3</sup> 85 FR 25315.

<sup>4</sup> *See id.* for table of extended deadlines for compliance.

<sup>5</sup> 85 FR 67681.

<sup>6</sup> The Sector Coordinating Councils (SCCs) are self-organized and self-governed councils that enable critical infrastructure owners and operators, their trade associations, and other industry representatives to interact on a wide range of sector-specific strategies, policies, and activities. The SCCs coordinate and collaborate with sector-specific agencies (SSAs) and related Government Coordinating Councils (GCCs) to address the entire range of critical infrastructure security and resilience policies and efforts for that sector.

<sup>7</sup> *See* Docket No. TSA-2015-0001-0050 at Regulations.gov for Letter from Thomas Farmer of the Association of American Railroads; Polly Hanson of the American Public Transportation Association; Chief Ronald Pavlik of the Washington Metropolitan Area Transportation Authority; Colonel (Ret.) Michael Licata, Academy Bus; and JR Gelnar of the American Short Line and Regional Railroad Association (dated Feb. 19, 2021), as respective chairs of the SCCs referenced above.

<sup>8</sup> Published at 86 FR 7205 (Jan. 26, 2021).

Transportation System),<sup>9</sup> the Centers for Disease Control and Prevention’s Order,<sup>10</sup> TSA’s security directive issued under the authority of 49 U.S.C. 114,<sup>11</sup> and additional actions taken by the operating administrations of the Department of Transportation.<sup>12</sup>

### *B. Correcting Citation Errors*

As published, the regulatory text in the final rule contains several incorrect references to other provisions in the rule. First, TSA intended the applicability of the reporting security issues requirement in 49 CFR 1570.203 to align with the applicability of the security coordinator requirement in § 1570.201. As noted in the preamble to the final rule, TSA intended the scope of the security coordinator and reporting requirement to apply to all *rail* entities covered by Rail Transportation Security rule published in 2008,<sup>13</sup> plus—

- “Any bus operations of a public transportation owner/operator required to provide security training under this rule; and
- Any OTRB owner/operator required to provide security training under this rule.”<sup>14</sup>

TSA’s intent is also reflected in the Regulatory Impact Analysis (RIA) for the final rule, which only included costs for expanding the current requirement to regulate bus-only transit agencies and OTRB operations in the higher-risk areas designated in the

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<sup>9</sup> Acting Secretary David P. Pekoske, Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System (Jan. 27, 2021), *available at* <https://www.dhs.gov/publication/determination-national-emergency-requiring-actions-protect-safety-americans-using-and> ([last visited Mar. 25, 2021](#)).

<sup>10</sup> See Centers for Disease Control and Prevention, Order, *Requirement for Persons To Wear Masks While on Conveyances and at Transportation Hubs*, 86 FR 8025 (Feb. 3, 2021).

<sup>11</sup> See Security Directive 1582/84-21-01, applicable to passenger railroads, intercity bus services, and public transportation. TSA simultaneously issued directives applicable to airports, aircraft operators, and foreign air carriers. All of these directives are available at: <https://www.tsa.gov/sd-and-ea>.

<sup>12</sup> See, e.g., Emergency Order No. 32, Notice No.1, of the Federal Railroad Administration, Emergency Order Requiring Face Mask Use in Railroad Operations (dated Feb. 24, 2021), *available at* <https://railroads.dot.gov/sites/fra.dot.gov/files/2021-02/Signed%20EO%2032%20%28Face%20Masks%29%20-%202.24.2021.pdf>.

<sup>13</sup> See 73 FR 72129 (Nov. 26, 2008).

<sup>14</sup> See 85 FR at Table 2 and related discussion at 16465-66.

appendices to parts 1582 and 1584.<sup>15</sup> Notwithstanding TSA’s clear intention, the final rule incorrectly applies the reporting requirement to, among other entities, “[e]ach owner/operator identified in § . . . 1582.1[.]” And § 1582.1, which provides the scope for all of part 1582, broadly includes “each public transportation agency.”<sup>16</sup> To be consistent with TSA’s intent, the applicability of the requirement to report significant security concerns should mirror the applicability of the requirement to have a security coordinator under 49 CFR 1570.201. While § 1570.201 also applies to “each public transportation agency,” it excepts from the requirement a public transportation agency that “owns or operates a bus-only operation” unless “the owner/operator is identified in appendix A to part 1582 of this subchapter or is otherwise notified by TSA in writing that a threat exists concerning that operation.” TSA is adding parallel language to § 1570.203, to correct the technical error as it relates to public transportation agencies.

Second, the applicability of 49 CFR 1582.101(c) addresses passenger railroads that host freight railroads. As noted in the preamble to the proposed and final rules, TSA intends for passenger railroads to be responsible for ensuring security training requirements are met when they are hosting a freight railroad.<sup>17</sup> The rule incorrectly cross references to 49 CFR 1580.301. Part 1580, however, does not include a § 1580.301. The correct citation is to § 1580.101.

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<sup>15</sup> See Security Training Programs for Surface Transportation Employees Final Regulatory Impact Analysis at sections 3.2.4 (Cost of Implementing Security Training for Surface Mode Employees/PTPR Industry Costs/Incident Reporting Cost) and 3.3.4 (Cost of Implementing Security Training for Surface Mode Employees/OTRB Industry Cost/Incident Reporting Cost). The Final RIA is available in the docket for this rulemaking at Regulations.gov as TSA-2015-0001-0040.

<sup>16</sup> The scope in 1582.1 includes: (1) each passenger railroad carrier; (2) each public transportation agency; (3) each operator of a rail transit system that is not operating on track that is part of the general railroad system of transportation, including heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems; and (4) each tourist, scenic, historic, and excursion rail owner/operator, whether operating on or off the general railroad system of transportation. The only exemption from the scope is for certain ferry systems that provide public transportation that are already subject to other regulatory requirements.

<sup>17</sup> See 85 FR at 16460-16461 (Section II.A.4, Impact on Certain Business Operations) and 16474 (Section VII.A.3, Stakeholder Consultation/Comments on definition of “host railroad”).

Third, § 1582.101(c) references passenger railroads identified in § 1582.101(a)(1) and (a)(2). Again, these subsections do not exist. The correct citation is to § 1582.101(a) and (b). This final rule correction replaces the incorrect citations with the correct ones.

#### *C. Compliance Deadline for Submission of Security Training Programs*

TSA recognizes the impact of COVID-19 on our surface stakeholders and the need to provide relief at a time when many owner/operators are simultaneously leveraging a range of resources to address multiple challenging circumstances, and struggling financially and limiting operations due to the effects of the COVID-19 public health crisis. After considering the current operational environment and the purpose of this regulation, TSA has decided to further extend the compliance deadline in § 1570.109(b) for security program submission from March 22, 2021, to June 21, 2021.

This extension would provide the industry with a total of 270 days of relief for submission of security training programs as compared to the original deadline of September 20, 2020, and extend the deadline for initial training of all employees in security-sensitive positions into the fall of 2022.<sup>18</sup> Should TSA determine that an additional extension of time for submission of the security training program is necessary based upon the impact of the COVID-19 public health crisis, TSA will publish a document in the *Federal Register* announcing an updated compliance date for this requirement.

#### *D. Extending Initial Training Deadline for Certain Owner/Operators*

Almost thirty percent of owner/operators required to submit a training program have already submitted them to TSA. For those owner/operators that submitted a training program to TSA for approval by the current deadline (March 22, 2021), TSA is revising

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<sup>18</sup> Under the rule, owner/operators have up to one year (12 months) after their security training program is approved by TSA to provide initial training to all of their security-sensitive employees. *See* § 1570.111. Once the proposed program is submitted to TSA, the agency has 60 days (2 months) to review and approve a security program, with the ability to extend the review period and/or require the owner/operator to modify the program, which would stay the 60-day period.

49 CFR 1570.111(a) to ensure we do not disadvantage these owner/operators who were able to submit their programs, but who may still be addressing the operational issues related to COVID-19 that make compliance difficult – particularly related to identifying and training security-sensitive employees during a time when employment may be more fluid based on demand and the impact of sick employees.

TSA has determined that in light of the unprecedented circumstances created by the COVID-19 pandemic, past rule delays, and the additional compliance date delay described above, it is in the public interest to grant owner/operators who submitted their training programs to TSA by the March 2021 deadline an additional 90 days (15 months instead of 12 months) from the date of TSA approval to complete the initial training required by 49 CFR 1570.111. This modification will ensure owner/operators who submitted their training programs to TSA for approval by the current deadline are treated equitably compared to those who wait until the extended deadline to submit their programs. TSA is making certain non-substantive changes to § 1570.111(a) as necessary to clearly reflect this distinction and the compliance deadlines for initial training.

*E. Economic Relief Related to the COVID-19 Pandemic*

Under E.O. 14002 of January 22, 2021 (Economic Relief Related to the COVID-19 Pandemic), federal agencies are required to “identify actions they can take within existing authorities to address the current economic crisis resulting from the pandemic.”<sup>19</sup> Agencies are further directed to “prioritize actions that provide the greatest relief to individuals, families, and small businesses; and to State, local, Tribal, and territorial governments.”<sup>20</sup>

This action supports economic recovery by delaying the impact of TSA’s regulatory requirements as applied to freight railroads responsible for moving cargo

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<sup>19</sup> See E.O. 14002 at Sec. 2(a), published at 86 FR 7229 (Jan. 27, 2021).

<sup>20</sup> *Id.* at Sec. 2b).

across the country, small businesses such as some OTRB owner/operators, and the State and local governments operating public transportation systems. Delaying the compliance dates described above will allow these regulated entities to focus on serving the needs of their customers and the communities they serve, ensuring the safety of their employees, and implementing the federal government's requirements for masks to be worn within the nation's commercial and public transportation systems.

#### **IV. Regulatory Analysis**

##### *A. Administrative Procedure Act*

TSA takes this action without prior notice and public comment. Sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. 553) authorize agencies to dispense with certain rulemaking procedures when they find good cause to do so. Under section 553(b), the requirements of notice and opportunity to comment do not apply when the agency for good cause finds that these procedures are “impracticable, unnecessary, or contrary to the public interest.” Section 553(d) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

This final rule recognizes the need to extend the compliance deadline for the requirement in the Security Training Final Rule that would be most difficult for owner/operators to implement during the current COVID-19 public health crisis and the significant disruption and uncertainty in both private and local government operations caused by this crisis. Specifically, TSA is extending the period during which owner/operators must develop a security training program for their employees and submit the program to TSA for approval. Delaying this requirement also effectively delays the deadline for training employees.



TSA has good cause to delay the compliance deadlines without advance notice and comment or a delayed effective date.<sup>21</sup> To delay taking this action while waiting for public comment would be impracticable and contrary to the public interest. The owner/operators subject to the requirements of the final rule need immediate certainty regarding the deadlines of the final rule so that they may focus on other urgent issues affecting their operations.

Given that the rule does not impose new requirements, provides regulatory relief consistent with E.O. 14002 of January 22, 2021, and otherwise only involves technical corrections to an existing regulation, TSA finds sufficient good cause exists to dispense with an opportunity for notice-and-comment and the 30-day effective date requirement. The rule will, therefore, be effective immediately upon publication.

#### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA)<sup>22</sup> requires federal agencies to consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information. OMB has approved the collection of information for the Security Training Final Rule under OMB control number 1652-0066. While this rule delays the timing of submission, it does not modify the collection burdens that OMB has already approved.

#### *C. Executive Orders 12866 and 13563*

E.O. 12866 of September 30, 1993 (Regulatory Planning and Review) and E.O. 13563 January 18, 2011 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential

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<sup>21</sup> See 5 U.S.C. 553(b)(B), (d).

<sup>22</sup> See 44 U.S.C. 3501 *et seq.*

economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

E.O. 12866 defines “significant regulatory action” as one that is likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the E.O. OMB has not designated this rule a “significant regulatory action,” under E.O. 12866. Accordingly, OMB has not reviewed it.

#### *D. Regulatory Flexibility Act Assessment*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), requires federal agencies to consider the potential impact of regulations on small businesses, small government jurisdictions, and small organizations during the development of their rules. This final rule, however, makes changes for which notice and comment are not necessary. Accordingly, DHS is not required to prepare a regulatory flexibility analysis.<sup>23</sup>

#### *E. Executive Order 13132*

A rule has federalism implications under E.O. 13132 of August 4, 1999 (Federalism), if it has a substantial direct effect on State governments, on the relationship between the national government and the States, or on the distribution of power and

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<sup>23</sup> See 5 U.S.C. 603, 604.

responsibilities among the various levels of government. DHS has analyzed this rule under E.O. 13132 and determined that although this rule affects the States, it does not impose substantial direct compliance costs or preempt State law.<sup>24</sup> The rule relieves burdens on States.

#### *F. Unfunded Mandates Assessment*

The Unfunded Mandates Reform Act of 1995 requires federal agencies to assess the effects of their regulatory actions. In particular, the Unfunded Mandates Reform Act of 1995 addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. This final rule will not result in such an expenditure.

#### *G. Environment*

TSA has reviewed this rulemaking for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment. This action is covered by categorical exclusion number A3(e) in DHS Management Directive 023-01 (formerly Management Directive 5100.1), Environmental Planning Program, which guides TSA compliance with the National Environmental Policy Act of 1969.

### **List of Subjects**

#### **49 CFR Part 1570**

Commuter bus systems, Crime, Fraud, Hazardous materials transportation, Motor carriers, Over-the-Road bus safety, Over-the-Road buses, Public transportation, Public transportation safety, Rail hazardous materials receivers, Rail hazardous materials shippers, Rail transit systems, Railroad carriers, Railroad safety, Railroads, Reporting and recordkeeping requirements, Security measures, Transportation facility, Transportation Security-Sensitive Materials.

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<sup>24</sup> See E.O. 13132, sec. 6.

## **49 CFR Part 1582**

Public transportation, Public transportation safety, Railroad carriers, Railroad safety, Railroads, Rail transit systems, Reporting and recordkeeping requirements, Security measures.

### **The Amendments and Corrections**

For the reasons stated in the preamble, the Transportation Security Administration is amending and making correcting amendments to 49 CFR parts 1570 and 1582 as follows:

#### **PART 1570—GENERAL RULES**

1. The authority citation for part 1570 continues to read as follows:

**Authority:** 18 U.S.C. 842, 845; 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; Pub. L. 108-90 (117 Stat. 1156, Oct. 1, 2003), sec. 520 (6 U.S.C. 469), as amended by Pub. L. 110-329 (122 Stat. 3689, Sept. 30, 2008) sec. 543 (6 U.S.C. 469); Pub. L. 110-53 (121 Stat. 266, Aug. 3, 2007) secs. 1402 (6 U.S.C. 1131), 1405 (6 U.S.C. 1134), 1408 (6 U.S.C. 1137), 1413 (6 U.S.C. 1142), 1414 (6 U.S.C. 1143), 1501 (6 U.S.C. 1151), 1512 (6 U.S.C. 1162), 1517 (6 U.S.C. 1167), 1522 (6 U.S.C. 1170), 1531 (6 U.S.C. 1181), and 1534 (6 U.S.C. 1184).

#### **Subpart B—Security Programs**

2. Amend § 1570.109 by revising paragraphs (b)(1) and (2) to read as follows:

##### **§ 1570.109 Submission and approval.**

\* \* \* \* \*

(b) \* \* \*

(1) Submit its program to TSA for approval no later than June 21, 2021.

(2) If commencing or modifying operations so as to be subject to the requirements of subpart B to 49 CFR parts 1580, 1582, or 1584 after June 21, 2021, submit a training

program to TSA no later than 90 calendar days before commencing new or modified operations.

\* \* \* \* \*

3. Amend § 1570.111 by revising paragraph (a) to read as follows:

**§ 1570.111 Implementation schedules.**

(a) *Initial security training.* Each owner/operator required under parts 1580, 1582, or 1584 of this subchapter to adopt and carry out a security program must provide initial security training to security-sensitive employees, using the curriculum approved by TSA and in compliance with the following schedule.

(1) For security training programs submitted to TSA for approval on or before March 22, 2021, if the employee is employed to perform a security-sensitive function on the date TSA approves the program, then initial training must be provided no later than fifteen months after the date that TSA approves the owner/operator's security training program.

(2) For security training programs submitted to TSA for approval after March 22, 2021, if the employee is employed to perform a security-sensitive function on the date TSA approves the program, then initial training must be provided no later than twelve months after the date that TSA approves the owner/operator's security training program.

(3) If performance of a security-sensitive job function is initiated after TSA approves the owner/operator's security training program, then initial training must be provided no later than 60 calendar days after the employee first performs the security-sensitive job function.

(4) If the security-sensitive job function is performed intermittently, then no later than the 60th calendar day of employment performing a security-sensitive function, aggregated over a consecutive 12-month period.

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4. Amend § 1570.203 by revising paragraph (a) to read as follows:

**§ 1570.203 Reporting significant security concerns.**

(a)(1) Except as provided in paragraph (a)(2) of this section, each owner/operator identified in §§ 1580.1, 1582.1, and 1584.101 of this subchapter must report, within 24 hours of initial discovery, any potential threats and significant security concerns involving transportation-related operations in the United States or transportation to, from, or within the United States as soon as possible by the methods prescribed by TSA.

(2) An owner/operator identified in § 1582.1(a)(2) of this subchapter (public transportation agency) that owns or operates a bus-only operation must only comply with the requirements in this section if the owner/operator is identified in appendix A to part 1582 of this subchapter or is notified by TSA in writing that a threat exists concerning that operation.

\* \* \* \* \*

**PART 1582—PUBLIC TRANSPORTATION AND PASSENGER  
RAILROAD SECURITY**

5. The authority citation for part 1582 continues to read as follows:

**Authority:** 49 U.S.C. 114; Pub. L. 110-53 (121 Stat. 266, Aug. 3, 2007) secs. 1402 (6 U.S.C. 1131), 1405 (6 U.S.C. 1134), and 1408 (6 U.S.C. 1137).

**Subpart B—Security Programs**

6. Amend § 1582.101 by revising paragraph (c) to read as follows:

**§ 1582.101 Applicability.**

\* \* \* \* \*

(c) Each owner/operator described in § 1582.1(a)(1) through (3) that serves as a host railroad to a freight operation described in § 1580.101 of this subchapter or to a passenger train operation described in paragraph (a) or (b) of this section.

Dated April 29, 2021

Darby LaJoye,

*Senior Official Performing the Duties of the Administrator.*

[FR Doc. 2021-09394 Filed: 4/30/2021 4:15 pm; Publication Date: 5/4/2021]